

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE
CARPENTERS ANNUITY, APPRENTICESHIP,
LABOR-MANAGEMENT COOPERATION,
PENSION AND WELFARE FUNDS,

Plaintiffs,

-against-

ORDER

13 CV 46 (DRH) (WDW)

TRINITY PHOENIX CORP.,

Defendant.

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HURLEY, Senior District Judge:

Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension, and Welfare Funds (“Plaintiffs” or the “Funds”) commenced this action against Trinity Phoenix Corp (“Defendant” or “Trinity”) under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1132(a)(3), Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. § 185, and Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9, to confirm and enforce an Arbitration Award. After Trinity’s default was noted by the Clerk of Court pursuant to Federal Rule of Civil Procedure (“Rule”) 55(a), Plaintiffs moved for entry of a default judgment under Rule 55(b). On February 22, 2013, Plaintiffs’ motion was referred to United States Magistrate Judge William D. Wall to issue a Report and Recommendation as to whether Plaintiffs had demonstrated that the allegations in the Complaint established the Defendant’s liability such that the motion for default judgment should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded.

On August 8, 2013, Judge Wall issued a Report and Recommendation which recommended that Plaintiffs' motion for a default judgment be denied without prejudice to renewal on the filing of additional documentation to provide a basis for the damages awarded by the arbitrator. On October, 9, 2013, Plaintiffs renewed their motion for entry of a default judgment under Rule 55(b), and, on October 10, 2013, Plaintiffs' renewed motion was referred to Judge Wall to issue a Report and Recommendation as to whether Plaintiffs had demonstrated that the allegations in the Complaint established the Defendant's liability such that the motion for default judgment should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded.

On January 8, 2014, Judge Wall issued a Report and Recommendation which recommended that Plaintiffs be awarded a total of \$197,549.41. More than fourteen days have elapsed since service of the Report and Recommendation and no party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the January 8, 2014 Report and Recommendation for clear error, and finding none, adopts the January 8, 2014 Report and Recommendation as the opinion of the Court, except for the following correction to a clerical error: Plaintiffs are to be awarded interest on the delinquent contributions in the amount of \$15,293.97, not \$15,292.97, as stated on page 1 of the January 8, 2014 Report and Recommendation.

Plaintiffs' motion for a default judgment is granted. The Court hereby directs that Plaintiffs recover from Defendant the amounts itemized below, and that judgment be entered accordingly:

- (i) \$196,056.07, consisting of:
 - a. delinquent contributions of \$150,145.50;

- b. interest of \$15,293.97 on the delinquent contributions, calculated at the rate of .75% per month, plus additional interest that may accrue if they remain outstanding;
 - c. liquidated damages of \$30,029.10;
 - d. attorneys' fees of \$237.50 incurred in the arbitration; and
 - e. an arbitrator's fee of \$350;
- (ii) an arbitrator's fee of \$250, as provided for in the Audit Order;
 - (iii) attorneys' fees in the amount of \$875; and
 - (iv) costs in the amount of \$369.34.

Upon entry of judgment, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
March 3, 2014

/s/
Denis R. Hurley
United States District Judge